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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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MAR 29 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Qwest Corporation) CC Docket No. 96-45
)
Petition for Waiver of Section 54.313 of the)
Commission's Rules)

PETITION FOR WAIVER OF QWEST CORPORATION

Pursuant to section 1.3 of the Federal Communications Commission's ("Commission") rules,¹ Qwest Corporation ("Qwest") hereby requests a waiver of section 54.313 of the Commission's rules, so that Qwest can obtain federal high-cost universal service support for its service area in South Dakota for the first and second quarters of 2004. Qwest's waiver request is fully supported by the South Dakota Public Utilities Commission ("South Dakota PUC").² As discussed below, this waiver is warranted, given the fact that Qwest became eligible for federal high-cost support in South Dakota after the October 1, 2003 deadline for filing the annual certification for 2004.

I. **BACKGROUND**

Under the Commission's rules, state commissions must file by October 1 an annual certification that a non-rural incumbent local exchange carrier ("non-rural carrier") will use all federal high-cost support provided to that carrier for the provision, maintenance, and upgrading

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¹ 47 C.F.R. § 1.3.

² See South Dakota PUC letter, dated Mar. 25, 2004, attached hereto.

of facilities and services for which the support is intended. Such certification is necessary in order for that carrier to receive high-cost support for that state in the following calendar year.³

On December 24, 2003, the Commission issued a Public Notice providing a state-by-state estimate of non-rural high-cost support amounts for 2004.⁴ An attached chart showed that eligible telecommunications carriers (“ETCs”) in non-rural carriers’ service areas in South Dakota would be eligible to receive approximately \$2 million in high-cost model support for 2004.⁵ Prior to 2004, ETCs in those areas had not received any support under the Commission’s current high-cost methodology.

On March 25, 2004, the South Dakota PUC adopted an order finding that Qwest had properly demonstrated that it will use federal high-cost support only for the provision, maintenance, and upgrading of facilities and/or service for which the support is intended in accordance with section 254(e) of the Communications Act of 1934, as amended.⁶ The South Dakota PUC accordingly stated that it would provide requisite certification to the Administrator and the Commission so that Qwest could receive high-cost universal service support for South Dakota. On the same date, the South Dakota PUC submitted a certification to the Commission and USAC.⁷ In the letter, the South Dakota PUC expressed support for the waiver request that it

³ 47 C.F.R. § 54.313(d)(3).

⁴ *Wireline Competition Bureau Releases Estimated State-By-State High-Cost Universal Service Support Amounts For Non-Rural Carriers For 2004*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 26657 (2003) (“Public Notice”).

⁵ *Id.* at 26659 (Attachment).

⁶ See South Dakota PUC Order Granting Certification, TC04-039, dated Mar. 25, 2004, attached hereto.

⁷ South Dakota PUC Letter.

anticipated Qwest would be filing to obtain high-cost support for the first two quarters of this year.⁸

II. DISCUSSION

Under section 1.3 of its rules, the Commission may waive application of its rules for good cause shown.⁹ In this case, there clearly is ample justification for a waiver given the unique circumstances presented. At the time of the October 1 deadline, there was no reason for the South Dakota PUC to file an annual certification for Qwest. Qwest was not receiving high-cost support in South Dakota and there was no indication that it would be eligible for such support in 2004.

Moreover, failure to grant the waiver would mean that Qwest would not be eligible for high-cost support in South Dakota for the first and second quarters of this year, contrary to the South Dakota PUC's determination that such support is needed in South Dakota to ensure sufficient support consistent with section 254. Thus, the requested waiver is fully consistent with the public interest. The request is also consistent with previous waivers granted by the Commission.¹⁰ As a result, the Commission should grant the requested waiver so that Qwest will be eligible to receive high-cost support in South Dakota for the first and second quarters of 2004.

III. CONCLUSION

For the foregoing reasons, the Commission should grant the requested waiver of section 54.313 of the Commission's rules to treat the South Dakota PUC's certification as timely filed

⁸ *Id.*

⁹ 47 C.F.R. § 1.3.

¹⁰ See, e.g., *In the Matter of Federal-State Joint Board on Universal Service; West Virginia Public Service Commission; Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, 16 FCC Rcd 5784 (2001).

for purposes of Qwest being eligible to receive high-cost support in its service area in South Dakota for the first and second quarters of 2004.

Respectfully submitted,

QWEST CORPORATION

By:


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Its Attorneys

March 29, 2004



Bob Sahr, Chair
Gary Hanson, Vice-Chair
Jim Burg, Commissioner

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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March 25, 2004

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street S.W.
Washington, DC 20554

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Ms. Irene Flannery
Universal Service Administrative Company
2120 L Street N.W., Suite 600
Washington, DC 20037

Re: CC Docket No. 96-45, State Certification of Support for a Non-rural Carrier

Dear Ms. Dortch and Ms. Flannery:

The South Dakota Public Utilities Commission (Commission) hereby states that Qwest Corporation (Qwest), a non-rural incumbent local exchange carrier that is subject to the Commission's jurisdiction, has been certified to receive support pursuant to 47 CFR § 54.313. Qwest filed a request for certification with the Commission which supports Qwest's affirmation that all federal high-cost support provided to it will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with section 254(e) of the Communications Act. The Commission has granted certification to Qwest and has enclosed the Order Granting Certification to Qwest. Qwest's study area code is 395145.

In addition, it is the Commission's understanding that Qwest will be requesting a waiver of the certification deadlines in order to receive support retroactive to January 1, 2004. The Commission supports the granting of any waivers requested by Qwest. This is the first year that Qwest has been eligible to receive high cost support for parts of its service area in South Dakota.

Should you have any questions, please do not hesitate to contact us for further information.

Sincerely,

Robert K. Sahr
Chairman

Gary Hanson
Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

| | |
|--|-----------------------|
| IN THE MATTER OF THE REQUEST OF) | ORDER GRANTING |
| QWEST CORPORATION FOR CERTIFICATION) | CERTIFICATION |
| REGARDING ITS USE OF FEDERAL) | |
| UNIVERSAL SERVICE SUPPORT) | TC04-039 |

On February 27, 2004, the South Dakota Public Utilities Commission (Commission) received a filing from Qwest Corporation (Company) regarding its Request for Certification Regarding its Use of Federal Universal Service Support. The purpose of this filing was to provide information constituting Company's plan for the use of its federal universal service support and to otherwise verify that Company will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. § 254. As a part of its plan, Company listed estimates of the support it expected to receive from the Universal Service Administrative Company (USAC) as well as its estimated costs for the provision, maintenance, and upgrading of facilities and services. An Affidavit was attached to the Request for Certification. Pursuant to 47 C.F.R. § 54.313, a state that desires a non-rural carrier within its jurisdiction to receive future federal universal service support must file an annual certification with the Federal Communications Commission and USAC stating that federal high cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. This certification requirement applies to various categories of federal universal service support. Support provided under FCC rules will only be made available if the State Commission files the requisite certification pursuant to § 54.313

On March 4, 2004, the Commission electronically transmitted notice of the filing and the intervention deadline of March 19, 2004, to interested individuals and entities. No parties sought intervention.

At its regularly scheduled meeting of March 23, 2004, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-31, and 47 U.S.C. § 254. The Commission found that the Company is eligible to receive federal support as it states it will only use the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The Commission voted to approve Company's Request for Certification Regarding Its Use of Federal Universal Service Support. The Commission also stated its support for Qwest's request for any necessary waivers from the FCC that would allow Qwest to receive federal support retroactive to January 1, 2004. It is therefore

ORDERED, that the Company is eligible to receive federal support as it states it will only use the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended. It is

FURTHER ORDERED, that the Commission approves Company's Request for Certification Regarding Its Use of Federal Universal Service Support. It is

FURTHER ORDERED, that the Commission supports Qwest's request for any necessary waivers from the FCC that would allow Qwest to receive federal support retroactive to January 1, 2004.

Dated at Pierre, South Dakota, this 25th day of March, 2004.

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| <p align="center">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By <u><i>Tina Douglas</i></u></p> <p>Date <u>3-25-04</u></p> <p align="center">(OFFICIAL SEAL)</p> |
|---|

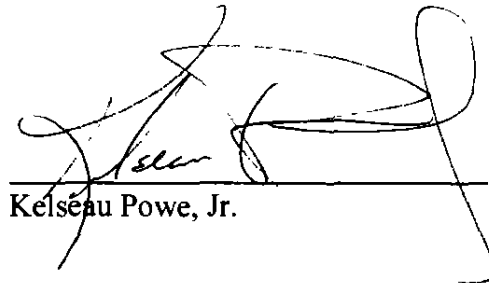
BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that I have caused the foregoing **PETITION FOR WAIVER OF QWEST CORPORATION** to be 1) filed with the FCC, 2) served, via email, on Mr. Eric Einhorn of the Wireline Competition Bureau's Telecommunications Access Policy Division at eric.einhorn@fcc.gov and Ms. Sharon Webber of the Wireline Competition Bureau's Telecommunications Access Policy Division at sharon.webber@fcc.gov, and 3) served via First Class United States mail, postage prepaid, on the South Dakota Public Utilities Commission, 500 East Capitol Avenue, Pierre, SD 57501-5070.



Kelseau Powe, Jr.

March 29, 2004